

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

EDWARD WISNIEWSKI and	:	
MARY WISNIEWSKI, Co-Administrators	:	Case No.: 1:08-cv-00026-GMS
of the Estate of Eric E. Wisniewski, Deceased,	:	
	:	Jury Trial Demanded
Plaintiffs,	:	
	:	
v.	:	
	:	
OCEAN PETROLEUM, L.L.C., and	:	
BRUCE PREDEOUX,	:	
	:	
Defendants.	:	
	:	

**DEFENDANTS OCEAN PETROLEUM, L.L.C. AND BRUCE PREDEOUX'S
MOTION FOR LEAVE TO FILE A THIRD-PARTY COMPLAINT**

Defendants, Ocean Petroleum, L.L.C. and Bruce Predeoux, by and through their attorneys, Kent & McBride, P.C., hereby request this Honorable Court to enter an Order granting leave to Defendants to file a Third-Party Complaint, and in support thereof, set forth the following:

1. Eric E. Wisniewski ("Decedent") died of injuries as a result of being struck by a motor vehicle after running out of gas in Decedent's employment vehicle on February 2, 2006 on Route 1 near Townsend, Delaware.
2. The above-captioned action was instituted by Plaintiffs by way of the filing of a wrongful death and survival civil action Complaint.
3. Based on the discovery gathered to date, Defendants have reason to believe that the gas gauge in Decedent's vehicle had been inoperable for some time. Defendants also has reason to believe that Decedent's employer, Catts Plumbing Repair, Inc. ("Catts"), was

aware of the defective equipment, knowingly failed to make repairs and required Decedent to use the vehicle in the defective condition. It is the defective condition of the Catts' vehicle which caused Decedent to run out of gas and placed Decedent in an extremely hazardous condition on the roadway, ultimately resulting in his unfortunate death.

4. In light of this potential claim, Defendants Ocean Petroleum, L.L.C. and Bruce Predeoux seek to file a Third-party Complaint to add Catts Plumbing Repair, Inc., as a third-party defendant because Catts was a contributing factor to the cause of the accident which claimed Decedent's life. (See Defendant Ocean Petroleum, L.L.C. and Bruce Predeoux's proposed Third-party Complaint attached hereto as Exhibit 1).
5. By adding Catts Plumbing Repair, Inc., as a Third-party Defendant, it ensures this case will be decided on the merits as it arises from the same occurrence that prompted this litigation.
6. A party may amend a pleading after a response has been filed only by leave of court or by written consent of the adverse party. Federal Civil Rule 15.
7. The court shall give leave freely when justice so requires. Federal Civil Rule. 15.

WHEREFORE, Defendants respectfully request that the Court grant Defendants Ocean Petroleum, L.L.C. and Bruce Predeoux's Motion for Leave and allow Defendants to file the proposed Third-party Complaint.

Respectfully submitted,

KENT & MCBRIDE, P.C.

By: /s/ David C. Malatesta, Jr.
David C. Malatesta, Jr., Esq.
DE Bar Id.: 3755

1105 Market Street, Suite 500
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Phone: (302) 777-5477
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Attorney for Defendants Ocean Petroleum,
L.L.C. and Bruce Predeoux

Dated: July 17, 2008

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	:	
Defendants.	:	
	:	

**DEFENDANT OCEAN PETROLEUM, L.L.C. AND BRUCE PREDEOUX’S
MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE A THIRD-PARTY
COMPLAINT**

I. MATTER BEFORE THE COURT

Defendants, Ocean Petroleum, L.L.C. and Bruce Predeoux respectfully request leave of Court to file an Amended Answer to the Complaint.

II. STATEMENT OF QUESTION INVOLVED

Should the Court allow Plaintiff to file a Amended Answer to the Complaint pursuant to Civil Court Rule 15 to include Catts Plumbing Repair, Inc. to this litigation?

PROPOSED ANSWER: Yes.

III. STATEMENT OF FACTS

The above-captioned action was instituted by Plaintiffs by way of filing a civil action Complaint. (A true and correct copy of the Complaint is attached as Exhibit 1). In response, Defendants Ocean Petroleum L.L.C. and Bruce Predeoux filed an Answer to the Complaint. (A

true and correct copy of this pleading is attached as Exhibit 2).

Mr. Eric Wisniewski (“Decedent”) was an employee at Catts Plumbing Repair, Inc. On February 2, 2006, he was operating a vehicle owned by his employer when, due to a malfunctioning gas gauge, he ran out of gas and was forced to pull over onto the shoulder of Route 1. While refueling the vehicle with an emergency fuel can, decedent was struck by a vehicle owned and/or operated by defendants herein. Upon information and belief, decedent’s employer was aware of the defective condition of its vehicle, failed to make necessary repairs, required decedent to operate said vehicle and placed decedent in a dangerous and hazardous position so as to result in decedent’s unfortunate death.

IV. LEGAL ARGUMENT

A party may amend a pleading after a response has been filed only by leave of the court or by written consent of the adverse party. Civil Court Rule 15. The court shall give leave freely when justice so requires. *Id.* “Under the general standard enunciated by the U.S. Supreme Court, leave to amend under Rule 15(a) should be freely given unless there is evidence of undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies, prejudice, [or] futility[.]” *Hess v. Carmine, et. al.*, 396 A.2d 173, 177 (Del. 1978) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962).) “[A] motion to amend should be made as soon as the necessity for altering the pleading becomes apparent.” *Id.*

Defendants seek to amend their Answer to the Complaint to include Catts Plumbing Repair, Inc. (“Catts”) as a named Third-party Defendant. The legal interests raised in the naming Catts as a Defendant arise from the same occurrence that prompted this litigation—the claim for wrongful death and survival action resulting from motor vehicle incident that occurred on February 2, 2006. If the Court grants Defendants’ leave to amend, the Court will then be able to

adjudicate all rights related to Plaintiffs' claims, specifically regarding 1) the negligence, if any, of the defendants thereby creating a hazardous condition and joint tort-feasor liability, 2) whether this negligence caused decedent's injuries and subsequent death, and 3) the liability of joint tort-feasors from whom the present defendants may be entitled to contribution for all or part of the claim asserted by Plaintiffs.

Furthermore, Catts, because of its relationship with the decedent, is aware of this litigation, is aware of the knowing disregard for safety and negligent failure to repair its vehicle, and its requiring decedent to operate the defective vehicle, and, therefore, will not suffer any prejudiced by the filing of an Amended Answer to the Amended Complaint.

V. RELIEF REQUESTED

Defendants respectfully request that the Court grant Defendant Ocean Petroleum, L.L.C. and Bruce Predeoux's Motion for Leave to Amend and allow Defendants to file an Amended Answer to the Amended Complaint.

Respectfully submitted,

KENT & MCBRIDE, P.C.

By: /s/ David C. Malatesta, Jr.
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Attorney for Defendants Ocean Petroleum
L.L.C. and Bruce Predeoux

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OCEAN PETROLEUM, L.L.C., and	:	
BRUCE PREDEOUX,	:	
	:	
Defendants.	:	
	:	

NOTICE OF MOTION

PLEASE TAKE NOTICE that Defendants Ocean Petroleum, L.L.C. and Bruce Predeoux hereby seek leave of the Court to file a Third-party Complaint against Catts Plumbing Repair, Inc.

KENT & MCBRIDE, P.C.

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Phone: (302) 777-5477
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Attorney for Defendants
Ocean Petroleum, L.L.C. &
Bruce Predeoux

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BRUCE PREDEOUX,	:	
	:	
Defendants.	:	
	:	
OCEAN PETROLEUM, L.L.C., and	:	
BRUCE PREDEOUX,	:	
	:	
Third-Party Plaintiffs,	:	
	:	
v.	:	
	:	
CATTS PLUMBING REPAIR, INC.,	:	
	:	
Third-Party Defendant.	:	

**THIRD-PARTY COMPLAINT OF DEFENDANTS OCEAN PETROLEUM, L.L.C. AND
BRUCE PREDEOUX AGAINST CATTS PLUMBING REPAIR, INC.**

Defendants / Third-Party Plaintiffs, Ocean Petroleum, L.L.C. and Bruce Predeoux, by and through their attorneys, Kent & McBride, P.C. pursuant to Federal Rules of Civil Procedure, Rule 14, hereby submit their Third-Party Complaint against Third-Party Defendant, and aver as follows:

1. Upon information and belief, Plaintiffs, Edward Wisniewski and Mary Wisniewski, are husband and wife and are the surviving parents and Co-Administrator of the Estate of Eric E. Wisniewski, Deceased ("Decedent") and reside at 107 Megan Drive, Bear,

Delaware 19701.

2. Defendant / Third-Party Plaintiff, Ocean Petroleum, L.L.C. (“Ocean Petroleum”) is a Maryland Corporation with its principal place of business at 7167 Worchester Highway, Newark, Maryland 21841.

3. Defendant / Third-Party Plaintiff, Bruce Predeoux (“Predeoux”) is a citizen of Maryland residing at 29087 Raven Court, Salisbury, Maryland 21801.

4. Upon information and belief, Third-Party Defendant, Catts Plumbing Repair, Inc. (“Catts”), is a Delaware Corporation or other legal entity with a Registered Agent at Delaware Business Incorporators, Inc., 3422 Old Capitol Trail, Suite 700, Wilmington, Delaware 19808.

5. Defendants / Third-Party Plaintiffs were sued by Plaintiffs for a Wrongful Death Action and a Survival Action for injuries and other damages for an accident which occurred on February 2, 2006 on Route 1 approximately 2.4 miles south of the Route 299 on-ramp near Townsend, Delaware.

6. Upon information and belief, Third-Party Defendant Catts Plumbing was reckless, and/or negligent in allowing Plaintiff to operate a vehicle which it knew or should have known was in a defective condition, which directly lead to the vehicle running out of gas and breaking down on the side of the road, placing Plaintiff in a hazardous and dangerous situation which ultimately resulted in his death.

7. The proximate cause of Decedent’s accident was the recklessness and/or negligence of Third-Party Defendant, Catts Plumbing Repair, Inc., as follows:

- a) knowingly permitted its vehicle to be operated on the highway in an unsafe condition with inoperative equipment as to endanger decedent, in violation of 21

Del. C. § 4355(a);

- b) knowingly permitted its vehicle to be operated in an unfit and unsafe condition in violation of 21 Del. C. § 2161;
- c) knowingly permitted its vehicle to be operated in an unsafe condition and in improper and disrepair in violation of 21 Del. C. § 2144;
- d) knowingly breached its common law duty to take reasonable steps to safeguard against the operation of its motor vehicle in a defective condition;
- e) knowingly breached its common law duty to provide a reasonably suitable motor vehicle for its employee;
- f) knowingly breached its common law duty to exercise ordinary care to maintain its vehicle in a reasonably safe condition;
- g) knowingly breached its common law duty to reasonably provide a safe work environment for its employee;
- h) negligently failed to inspect or test the fitness of its vehicle to assure that it is reasonably safe and suitable for the work to be done;
- i) negligently breached its common law duty as an owner of a motor vehicle to assure that the vehicle was in a reasonably safe condition before requiring and permitting it to be operated upon a public highway and failure to assure that it is properly equipped so that at all times is under control and not a menace to other traffic.
- j) negligently breached its common law duty to assure that its vehicle's condition was safe and suitable for the particular kind of use in which it was to be

employed;

- k) negligently breached its common law duty to properly inspect and repair the vehicle in a reasonably prudent manner;
- l) negligently failed its duty as an employer to exercise reasonable care to furnish a reasonably safe place in which to work and to maintain such reasonably safe conditions;
- m) negligently failed to properly train its employees to exercise reasonable care in the operation of its negligently maintained equipment.

8. Defendants / Third-Party Plaintiffs deny that they are liable to the Plaintiff in any respect. However, in the event that Defendants / Third-Party Plaintiffs are held liable to Plaintiffs, then Defendants / Third-Party Plaintiffs are entitled to contribution and/or indemnification from Third-Party Defendant in any amount which Defendants / Third-Party Plaintiffs may be required to pay as a result of the wrongful acts of Third-Party Defendant Catts Plumbing, based upon the relative degrees of fault determined pursuant to the provisions of the Delaware Uniform Contribution Among Tortfeasors law, 10 Del. C. §§ 6301-6308.

WHEREFORE, Defendants / Third-Party Plaintiffs demand judgment against the Third-Party Defendant for any and all sums it must pay to any party including Plaintiffs, and Defendant / Third-Party Plaintiffs' reasonable costs, legal fees and expenses incurred in defending this litigation, with interest.

KENT & McBRIDE, P.C.

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Attorney for Defendants

Dated: July 2008

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BRUCE PREDEOUX,	:	
	:	
Defendants.	:	
	:	

ORDER

AND NOW, TO WIT, this _____ day of _____, 2008, this
Court having duly considered Defendants Ocean Petroleum, L.L.C. and Bruce Predeoux's
Motion for Leave to File a Third-party Complaint;

IT IS HEREBY ORDERED that Defendants' Motion for Leave to File a Third-party
Complaint is hereby **GRANTED**.

BY THE COURT:

J.

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BRUCE PREDEOUX,	:	
	:	
Defendants.	:	
	:	

CERTIFICATE OF SERVICE

I, DAVID C. MALATESTA, JR., ESQUIRE, hereby certify that I have served counsel of record, via electronic filing, with a copy of the attached Motion for Leave, Memorandum in Support of the Motion for Leave, and the proposed Third-Party Complaint, this 17th day of July, 2008

KENT & MCBRIDE, P.C.

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